

 Lusty, John (Vol. 01) - 11/14/2003

1 CLIP (RUNNING 01:41:02.500)

 JURY TRIAL - DAY 5 SEPTEMBER 19, 2006

LUSTY1

97 SEGMENTS (RUNNING 01:41:02.500)

1. PAGE 5:24 TO 6:11 (RUNNING 00:00:16.100)

24 THE VIDEOGRAPHER: Will the Officer please  
25  
26 :01 identify yourself and swear in the witness?  
27 :02 THE REPORTER: My name is Patricia  
28 :03 Armstrong from Espiritu & Associates, Chicago,  
29 :04 Illinois.  
30 :05 (The witness was thereupon  
31 :06 duly sworn.)  
32 :07 JOHN W. LUSTY  
33 :08 called as a witness herein, having been first  
34 :09 duly sworn, was examined and testified as  
35 :10 follows:  
36  
37 :11 DIRECT EXAMINATION

2. PAGE 7:22 TO 9:12 (RUNNING 00:01:26.800)

10 Q. And the Lakes District is in the  
11 central region?  
12 A. Yes, sir.

3. PAGE 9:21 TO 9:23 (RUNNING 00:00:06.500)

21 Q. How many dealers are currently in  
22 the Lakes District?  
23 A. 14 dealers and 16 locations.

4. PAGE 9:24 TO 10:22 (RUNNING 00:00:44.400)

24 Q. Have you been a district manager for  
00010:01 any districts other than the Lakes District?  
02 A. Yes.  
03 Q. Could you tell me about that?  
04 A. That was in the old eastern region  
05 and it's now the Allegheny District. That was  
06 out of Pittsburgh and Western Pennsylvania area.  
07 Q. What time frame are we generally  
08 talking about there? Give me the decade.  
09 A. Probably 10 or 12 years ago.  
10 Q. Early '90s?  
11 A. Yes.  
12 Q. You said you also had some  
13 involvement with national account sales; is that  
14 right?  
15 A. Yes.  
16 Q. What is national account sales?  
17 A. National accounts sales is a  
18 position where you sell to national account  
19 companies established by Mack Trucks.  
20 Q. Mack Truck sells to the national  
21 account?  
22 A. That's correct.

5. PAGE 17:24 TO 19:24 (RUNNING 00:01:50.900)

24 Q. Now as district manager, are you the  
00018:01 person at Mack that has most of the interaction  
02 with dealers within your region?  
03 A. Yes.  
04 Q. Do you visit dealers within your  
05 region?  
06 A. Yes.  
07 Q. How frequently do you do that?  
08 A. Some every month, some every other  
09 month; six day week cycle I would think.  
10 Q. Are you in pretty constant contact  
11 with dealers over the phone and through e-mail  
12 and things like that?  
13 A. Almost daily.  
14 Q. And just generally, how would you  
15 describe your responsibilities as a district  
16 manager?  
17 A. To promote the sales and marketing  
18 efforts of Mack Trucks, to help the dealers with  
19 inventory control and investments, customer  
20 contacts, specifications, reviewing  
21 specifications or questions about componentry;  
22 anything that would entail from the time the  
23 truck leaves the manufacturing plant to its  
24 retail to the end users.  
00019:01 Q. You don't have anything to do with

02 direct sales by Mack to national accounts, do  
03 you?  
04 A. I do not as a district manager.  
05 Q. All your responsibilities have to do  
06 with selling trucks through your dealers, right?  
07 A. That's correct.  
08 Q. Who do you report to?  
09 A. To Jeff Yelles.  
10 Q. Mr. Yelles then reports to  
11 Mr. Flaherty; is that right?  
12 A. That's correct.  
13 Q. Do you report at all to  
14 Mr. Flaherty?  
15 A. I ultimately look at him as  
16 executive vice president of sales, and I have an  
17 obligation to Mr. Flaherty probably.  
18 Q. But your direct report and the  
19 person you have the most dealing with is  
20 Mr. Yelles?  
21 A. That's correct.  
22 Q. How long have you worked for  
23 Mr. Yelles?  
24 A. Five years and a month or so.

**6. PAGE 21:20 TO 25:02 (RUNNING 00:03:20.000)**

20 Q. Now, various pages in here appear to  
21 me, Mr. Lusty to be from a calendar or a  
22 Daytimer. I don't know which it is?  
23 A. A Daytimer.  
24 Q. Is that something that you have  
00022:01 maintained throughout the years?  
02 A. Yes.  
03 Q. Is that a Daytimer that you have  
04 maintained in connection with the performance of  
05 your duties as a district manager?  
06 A. Yes.  
07 Q. What do you use that Daytimer for?  
08 A. Appointments, note taking, a number  
09 of things, but it's in the daily conduct of  
10 business.  
11 Q. I see on a number of pages, dates.  
12 A. What do you mean?  
13 Q. Take, for example, the second page.  
14 I see a date there; 3-13-01 at the top.  
15 A. Yes.  
16 Q. If we go through the document -- and  
17 we will go through it in a little more detail, I  
18 see throughout different dates written down, four  
19 different paragraphs.  
20 What does the date indicate?  
21 A. It's the dates that the note was  
22 taken; the time and date.  
23 Q. Why did you make these notes, sir?  
24 A. I have taken notes all my life about  
00023:01 a lot of things. I take a lot of business notes  
02 and some of these notes were personal.  
03 I thought the decisions or  
04 statements or responses were noteworthy at that  
05 time.  
06 Q. These notes all -- strike that.  
07 Was that also something that

08 you did in connection with your performance of  
09 your duties as a district manager?

10 A. Yes.

11 Q. Now, did you write anything down,  
12 sir, or would you right anything down if it  
13 wasn't something that had actually happened?

14 A. No.

15 Q. So if something is written down  
16 here, Mr. Lusty, is that an accurate report from  
17 you as to exactly what happened?

18 MR. HEEP: I am just going to object to  
19 the vagueness of the question and foundation.

20 Are you asking him to testify  
21 as to the accurateness of an awful lot of pages  
22 here?

23 BY THE WITNESS:

24 A. It was as accurate as I could be at  
00024:01 the time of the note taking.

02 BY MR. MACK:

03 Q. You were taking these notes right at  
04 or about the time the event happened; right?

05 A. Yes.

06 MR. HEEP: Same objection.

07 BY MR. MACK:

08 Q. You wanted to memorialize what had  
09 happened; right?

10 MR. HEEP: Same objection.

11 BY THE WITNESS:

12 A. I wanted to make a note of what  
13 taken place.

14 BY MR. MACK:

15 Q. Now, you have been through these  
16 notes at your prior deposition; a number of these  
17 notes; right?

18 A. Some of them. I don't have all of  
19 them, but yes.

20 Q. As we sit here today, Mr. Lusty, are  
21 you aware of anything that you wrote down in your  
22 Daytimer or on a note that was produced in this  
23 litigation that you believe is untrue?

24 MR. HEEP: Same objection.

00025:01 BY THE WITNESS:

02 A. No.

7. PAGE 25:13 TO 27:05 (RUNNING 00:01:41.200)

13 Q. Have you ever heard or received any  
14 complaints about Mr. Yeager selling outside his  
15 area of responsibility?

16 A. Yes.

17 Q. Have you ever heard or received any  
18 complaints about Mr. Yeager selling at a low cost  
19 price?

20 A. Yes.

21 Q. Have those complaints come from  
22 people at -- strike that.

23 Have those complaints about  
24 Mr. Yeager selling outside his AOR come from  
00026:01 people at Mack?

02 A. Yes.

03 Q. Have they come from Mr. Yelles?

04 A. Yes.

05 Q. Have they come from other district  
06 managers?  
07 A. Yes.  
08 Q. Can you tell me, sir, what other  
09 district managers you recall having complained  
10 about Mr. Yeager selling outside his AOR?  
11 A. John McCafferty, Dave Barletta, Jim  
12 Lockery, a little bit.  
13 Q. And where is Mr. Lockery?  
14 A. He is a district manager in the  
15 central region.  
16 Q. Have you received any complaints  
17 from anyone else at Mack about Mr. Yeager selling  
18 outside his AOR?  
19 A. Jeff Yelles.  
20 Q. Go ahead?  
21 A. A comment or two from Steve Polzer;  
22 a couple of phone conversations I had.  
23 Q. Have you received any complaints  
24 about Mr. Yeager selling outside his AOR from  
00027:01 other dealers?  
02 A. Yes.  
03 Q. Would those be other dealers in the  
04 Central Region?  
05 A. Yes.

**8. PAGE 27:06 TO 27:14 (RUNNING 00:00:37.500)**

06 Q. Can you just tell me, sir, what  
07 dealers have complained about Mr. Yeager selling  
08 outside his AOR?  
09 A. Flag City, R & R in Akron, R & R in  
10 Youngstown. That's the Youngstown-Cleveland  
11 group. Diesel Truck sales in Saginaw, Michigan.  
12 There must have been some chatter along the way.  
13 A number of dealers, I mean, yeah. That's as  
14 good as it get.

**9. PAGE 27:17 TO 27:23 (RUNNING 00:00:12.600)**

17 Mr. Yeager attempts to sell,  
18 promote the sale of trucks at a low price,  
19 doesn't he?  
20 A. Yes, he does.  
21 Q. He advertises low prices; is that  
22 right?  
23 A. That's correct.

**10. PAGE 28:19 TO 29:22 (RUNNING 00:00:49.500)**

19 Q. Now, have people at Mack Trucks,  
20 Inc. complained about Mr. Yeager's low cost  
21 pricing?  
22 A. Yes.  
23 Q. Has Mr. Yelles done that?  
24 A. Yes.  
00029:01 Q. Have other district managers done  
02 that?  
03 A. Yes.  
04 Q. Mr. McCafferty?  
05 A. Yes.  
06 Q. Mr. Barletta?  
07 A. Yes.  
08 Q. Am I missing anyone?

09           A.    There were some from out of the  
10 region that had made some comment.  
11 Q.        Who from out of the region?  
12           A.    Mike Maddox from the southern,  
13 southeast region.  
14           Q.    He is a district manager?  
15           A.    He is a district manager. Just some  
16 chatter from some other ones. I can't remember  
17 the specifics but --  
18           Q.    Chatter, but it wasn't "Mr. Yeager's  
19 doing a great job selling at a low price?"  
20           A.    Correct.  
21           Q.    It was derogatory or negative?  
22           A.    Yes.

**11. PAGE 30:02 TO 30:19 (RUNNING 00:00:40.100)**

02           Q.    Now, have you also heard, sir, from  
03 Mack dealers about Mr. Yeager's low cost pricing?  
04           A.    From other Mack dealers?  
05           Q.    Yes.  
06           A.    Yes.  
07           Q.    Would those be dealers within the  
08 Central Region?  
09           A.    Yes.  
10           Q.    Have you heard from any dealers  
11 outside the central region about that?  
12           A.    No.  
13           Q.    What dealers in the central region  
14 have complained to you about Mr. Yeager's low  
15 cost pricing?  
16           A.    The dealers that I mentioned in my  
17 previous statement. I didn't hear it from the  
18 actual -- some of the actual other dealers but  
19 through their district managers.

**12. PAGE 30:20 TO 30:22 (RUNNING 00:00:05.100)**

20 Q.       And that would be Mr. McCafferty or  
21 Mr. Barletta reporting back to you?  
22           A.    Yes.

**13. PAGE 31:09 TO 33:03 (RUNNING 00:02:08.900)**

09           Q.    And this is April 2001 diary  
10 records. These are your notes; right?  
11           A.    Yes.  
12           Q.    I want you to go down to the middle  
13 of the page where it says April 19th, 4-19.  
14                   Can you read into the record,  
15 sir, what you wrote there on April 19th?  
16 A.       Yes on 4-19, I had a cell call from  
17 Jeff Yelles to me at just about 4:00 o'clock p.m.  
18 and I was at the Brecksville Holiday Inn parking  
19 lot. I had a sore back from driving. Jeff  
20 Yelles to JL, which is me. D567, which is Toledo  
21 Mack, called Bulkmatic and promoted parts and  
22 truck pricing. Jeff Yelles, this has to stop.  
23 Jeff Yelles will not release the discount. This  
24 is an established dealer account. There is more  
00032:01 to this deal than truck pricing. This dealer  
02 does not sell in his own AOR. I am not going to  
03 let him queer this account. Jeff Yelles to JL,  
04 which is me, JL has to let Dave Yeager know this,

05 but not this weekend. And I -- parentheses -- I  
06 guess after the ATDA in Baltimore.  
07 Q. The statements that you read from  
08 Mr. Yelles, and I see you begin it with a  
09 quotation mark. Is that the actual words that he  
10 used?

11 A. Yes.

12 Q. "This has to stop." That's what he  
13 said?

14 A. Yes.

15 Q. He was referring to the attempt by  
16 Mr. Yeager to sell a truck to a company known as  
17 Bulkmatic?

18 A. Yes.

19 Q. Was that an established dealer  
20 account?

21 A. This dealer had been selling them,  
22 yes.

23 Q. What dealer had been selling to  
24 Bulkmatic?

00033:01 A. Chicago Mack Sales and Service.

02 Q. Mr. Yacobozzi's company?

03 A. That's correct.

**14. PAGE 33:13 TO 34:19 (RUNNING 00:01:22.500)**

13 Is this a fax that you sent to  
14 Mr. Yelles on May 7, 2001?

15 A. Yes.

16 Q. And the -- was this following up on  
17 an instruction of you received from Mr. Yelles?

18 A. Yes.

19 Q. What instruction had you received?

20 A. That this has to stop. He is not  
21 going to release the Bulkmatic pricing discount  
22 to Toledo Mack.

23 Q. That telephone conversation you just  
24 told us about?

00034:01 A. Yes.

02 Q. You say in this fax, "Per our  
03 discussion, I have expressed to Dave his  
04 predatory approach to customer prospecting has to  
05 cease and he should focus on marketing his  
06 assigned area of responsibility."

07 Was that something Mr. Yelles  
08 had told you to tell Mr. Yeager?

09 A. That's why I wrote the fax, yes.  
10 That was an instruction from Jeff Yelles.

11 Q. So you were doing what your boss  
12 told you to do?

13 A. That's correct.

14 Q. Had you said that to Mr. Yeager?

15 A. Yes. I am sure I did.

16 Q. Was that something that you  
17 personally agreed with?

18 A. That's something that I was  
19 instructed to do by my boss.

**15. PAGE 34:20 TO 35:04 (RUNNING 00:00:15.900)**

20 Q. I understand that.

21 What I am asking you is  
22 whether -- I understand you did what your boss

23 told you to do.

24 But I am not asking about you  
00035:01 personally, Jack Lusty. And let me ask it to you  
02 this way. If you had not been told by Mr. Yelles  
03 to do that, would you have done it?  
04 A. No, I wouldn't.

**16. PAGE 35:09 TO 35:09 (RUNNING 00:00:00.800)**

09 A. No.

**17. PAGE 35:10 TO 35:15 (RUNNING 00:00:08.300)**

10 Q. So I take it this wasn't your idea,  
11 this was his idea?  
12 A. Yes.  
13 Q. This was something you personally  
14 did not agree with; is that right?  
15 A. Correct.

**18. PAGE 37:03 TO 37:08 (RUNNING 00:00:24.000)**

03 Q. Where did you come up with the word,  
04 sir, the reference to a predatory approach to  
05 customer prospecting; second paragraph?  
06 A. That was a term what Jeff Yelles had  
07 used to me in expressing his concern about the  
08 advertising.

**19. PAGE 37:09 TO 37:19 (RUNNING 00:00:17.800)**

09 Q. Had Mr. Yelles explained to you what  
10 is predatory about it?  
11 A. No, not in detail.  
12 Q. Was it predatory because he was  
13 selling outside his territory?  
14 A. Yes.  
15 Q. Or that's what Mr. Yelles believes  
16 as you understood it?  
17 A. Yes.  
18 Q. You didn't feel Mr. Yeager was being  
19 predatory, did you?

**20. PAGE 37:22 TO 38:01 (RUNNING 00:00:02.100)**

22 A. No.  
23 BY MR. MACK:  
24 Q. He was just trying to get business;  
00038:01 right?

**21. PAGE 38:04 TO 38:04 (RUNNING 00:00:00.900)**

04 A. Yes.

**22. PAGE 38:09 TO 38:12 (RUNNING 00:00:14.700)**

09 Is sales assistance available  
10 to a dealer generally when he -- regardless of  
11 where he sells a truck?  
12 A. Yes.

**23. PAGE 39:16 TO 40:17 (RUNNING 00:01:08.200)**

16 Q. Did he get any sales assistance to  
17 sell trucks to Bulkmatic at that time?  
18 A. I can't remember. I don't think so.  
19 Q. Mr. Yelles told you he was not going  
20 to release sales assistance to Bulkmatic, right,

21 in your notes?  
22 A. Yes.  
23 Q. You don't recall him changing his  
24 mind on that, do you?  
00040:01 A. There was no sales assistance.  
02 MR. HEEP: Objection. The question is  
03 misleading inasmuch as it assumes that sales  
04 assistance was requested.  
05 BY MR. MACK:  
06 Q. What did you mean when you said, "JY  
07 will not release discount?"  
08 What discount were you  
09 referring to?  
10 A. Sales assistance and/or the  
11 established discount for Bulkmatic.  
12 Q. Did Mr. Yeager receive either sales  
13 assistance or the established discount for  
14 Bulkmatic?  
15 MR. HEEP: Same objection.  
16 BY THE WITNESS:  
17 A. I don't believe he did.

**24. PAGE 40:19 TO 41:07 (RUNNING 00:00:39.000)**

19 Q. How did you know this was a Chicago  
20 Mack account?  
21 A. Because I had Polzer Mack as one of  
22 my dealers and they are in Gary, Indiana and  
23 actually Bulkmatic is in Gary, Indiana or the  
24 outskirts. It's in Polzer's AOR but Chicago,  
00041:01 from the time it was a factory branch, had sold  
02 Bulkmatic. I aware of the account.  
03 Q. We are here today two years later or  
04 two-and-a-half years later.  
05 Has Mr. Yeager ever sold any  
06 trucks to Bulkmatic?  
07 A. No.

**25. PAGE 41:15 TO 43:11 (RUNNING 00:02:23.700)**

15 Q. Is this another phone conversation,  
16 sir, or notes of another phone conversation that  
17 you had with Mr. Yelles?  
18 A. Yes.  
19 Q. Would you read into the record, sir,  
20 the last paragraph?  
21 A. I was told to phone Dave/write him a  
22 market-share letter and provide year to date  
23 results. Dave should sell in his own AOR,  
24 Toledo.  
00042:01 Q. Is that -- did Mr. Yelles say to you  
02 on December 19 of 2001, Dave should sell in his  
03 own AOR, Toledo?  
04 A. That's correct.  
05 Q. Do you recall what incident, if any,  
06 was behind this phone conversation?  
07 A. Well, Jeff Yelles to me a phone  
08 conversation 12/19. Where is Yeager getting all  
09 this information about John McCafferty and Jeff  
10 Yelles to make the statements in his faxes.  
11 I have to think that there was  
12 a fax sent that had mentioned John McCafferty as  
13 a district manager and Jeff Yelles as the RVP, I

14 would think.

15 I wanted to know where they  
16 got all that information about John McCafferty  
17 being a district manager or something. I told  
18 Jeff that I answered Dave's questions Dave asked  
19 me. I am assuming at this point.

20 Q. Well, let's deal with what you  
21 remember.

22 Was Mr. Yeager attempting, in  
23 December of 2001, to sell trucks outside his AOR?

24 A. Yes.

00043:01 Q. Is it fair to say that during the  
02 years that you have been Mr. Yeager's district  
03 manager, he has attempted to sell trucks outside  
04 his AOR?

05 A. Yes.

06 Q. He hasn't limited his sales efforts  
07 to his own AOR?

08 A. That's correct.

09 Q. He has gone and tried to sell trucks  
10 hundreds and thousands of miles away, hasn't he?

11 A. Yes.

**26. PAGE 44:05 TO 49:02 (RUNNING 00:04:49.500)**

05 Q. Do you recognize this, sir?

06 A. Yes.

07 Q. Is this a sales assistance request  
08 you made for Toledo Mack in connection with a  
09 company known as R & J Trucking?

10 A. This is an e-mail, not a sales  
11 assistance request.

12 Q. Who did you send the e-mail to?

13 A. To Jeff Yelles.

14 Q. Why did you send the e-mail?

15 A. Because I had -- can I read this  
16 here for a minute?

17 Q. Sure.

18 A. Evidently, I had a sales assistance  
19 request from Toledo Mack for CH613 a factory  
20 order unit for R & J Trucking out of Youngstown,  
21 Ohio which is considered a national account.

22 I sent Scott Freeman, who is  
23 the national account representative of the sales  
24 assistance a cross checked e-mail. And he  
00045:01 advised me. He thinks Mack Trucks, Inc. does not  
02 have to issue sales assistance to a dealer on a  
03 national account but is not sure and has advised  
04 me to discuss this with you and/or legal  
05 department for clarification.

06 I phoned Scott to discuss and  
07 he informed me MTI is working on a three-year  
08 deal at this time and wants to be cautious, not  
09 to muddy the water and compromise the deal. I  
10 need some direction to handling this sensitive  
11 situation. Please advise me.

12 Q. And then did you have a phone  
13 conversation with Mr. Yelles about that?

14 A. Yes.

15 Q. On February the 19th?

16 A. Yes.

17 Q. What did Mr. Yelles tell you?

18 A. Jeff Yelles to JWL, which is me,  
19 advised Dave Yeager -- I was to advise Dave  
20 Yeager that National account is National  
21 accounts. They have been National accounts for  
22 years in reference to the R & J deal here. We  
23 can always use -- okay.

24 Q. Let's stop there and then there is  
00046:01 a -- he told you to tell Mr. Yeager that National  
02 accounts is National accounts.

03 Did you deliver that message  
04 to Mr. Yeager at the instruction of your boss?

05 A. Yes, I did.

06 Q. Was that something that you were  
07 personally in agreement with?

08 A. No.

09 Q. You were doing this, again, because  
10 you were told to do it?

11 A. Yes.

12 Q. What did you tell Mr. Yeager?

13 A. I told him that National accounts  
14 were National accounts.

15 Q. By that did you mean that dealers  
16 weren't supposed to sell to National accounts?

17 A. Yes.

18 Q. That's what Mr. Yelles had told you?

19 A. That's correct.

20 Q. Now, Mr. Yelles -- you have some  
21 more there and you have that in quotes.

22 Would you tell us what  
23 quotations you wrote down there?

24 A. Yes. In response to -- in the  
00047:01 conversation with Jeff Yelles and myself there,  
02 he advised me to tell Toledo Mack that National  
03 accounts is National accounts and we can always  
04 use that the customer does not want the discounts  
05 released as an excuse or we can use -- and we  
06 have used this on refuse deals for years and it  
07 seems to work.

08 Q. Now what excuse are you -- was he  
09 talking about there?

10 A. About the -- that we can say that  
11 the customer didn't want the discount released to  
12 another dealer to quote him trucks.

13 Q. How would that -- what did that have  
14 to do with any of this?

15 A. That would be the reason that we  
16 weren't going to release the discount; that the  
17 customer didn't want the discount released.

18 Q. I got you. So you tell the dealer  
19 that the customer didn't want the discount  
20 released. So as an excuse so you wouldn't have  
21 to give a discount on a sale to a National  
22 account?

23 MR. HEEP: Objection to the form of the  
24 question. Go ahead.

00048:01 BY MR. MACK:

02 Q. By you, I mean Mack. I don't mean  
03 you personally, Mr. Lusty.

04 A. Yes.

05 Q. Mr. Yelles told you in that  
06 conversation "We have used this on refuse deals  
07 for years and it seems to work"; am I right?

08 A. That's correct.  
09 Q. Were you familiar with what he was  
10 suggesting there? And by familiar, had you seen  
11 that before.

12 MR. HEEP: Objection vague.  
13 BY MR. MACK:

14 Q. Using that excuse?  
15 A. Probably by '02, yes.  
16 Q. Have you seen it since?  
17 MR. HEEP: Same objection.

18 BY THE WITNESS:

19 A. I have seen it within the last year.

20 BY MR. MACK:

21 Q. With respect to Mr. Yeager?  
22 A. Yes.  
23 Q. By "it," we are referring to telling  
24 Mr. Yeager that the customer didn't want the  
00049:01 discount released as a excuse?

02 A. Yes.

**27. PAGE 49:10 TO 50:23 (RUNNING 00:01:39.500)**

10 Q. Is this an exchange of e-mails  
11 between you and Mr. Freeman in February of 2002?

12 A. Yes.

13 Q. Who was Mr. Freeman?

14 A. Scott Freeman is a National accounts  
15 sales representative and formally the vice  
16 president of National accounts.

17 Q. For Mack Trucks?

18 A. Yes.

19 Q. In February of 2002, was -- do you  
20 know what position he had?

21 A. There was a change and I am really  
22 not sure when the change was, but I believe, at  
23 that point, he was just a National account sales  
24 representative.

00050:01 Q. But at some time he became vice  
02 president of national accounts?

03 A. That was prior to that.

04 Q. Some time he was vice president of  
05 national?

06 A. He was, at one time, vice president  
07 of National accounts.

08 Q. And you had put in -- why had you  
09 contacted him about R & J Trucking or  
10 Mr. Yeager's attempts to sell to R & J?

11 A. Because I had a sales assistance  
12 request from Toledo Mack for R & J Trucking out  
13 of Youngstown.

14 Q. Was that one of his accounts,  
15 Mr. Freeman's accounts?

16 A. Yes.

17 Q. Did Mr. Freeman tell you when it is  
18 a National account, we do not have to provide a  
19 sales allowance?

20 A. Yes.

21 Q. Did he also ask you to back them  
22 away from muddying the waters?

23 A. Yes.

## 28. PAGE 50:24 TO 51:04 (RUNNING 00:00:19.700)

24 Q. What did you understand him to mean  
 00051:01 by the use of the phrase "muddying the waters?"  
 02 A. That we didn't need another dealer  
 03 quoting this account that could possibly queer  
 04 the deal, for lack of a better word.

## 29. PAGE 51:08 TO 51:12 (RUNNING 00:00:15.500)

08 Q. This was an account that Mack Trucks  
 09 was selling to -- directly; right?  
 10 A. Yes.  
 11 Q. Mr. Freeman didn't want Mr. Yeager  
 12 soliciting that account, did he?

## 30. PAGE 51:21 TO 51:21 (RUNNING 00:00:00.700)

21 A. He did not.

## 31. PAGE 55:21 TO 58:13 (RUNNING 00:02:37.900)

21 Q. Are these notes of a conversation  
 22 that you had with Mr. Yelles on October 9, 2002?  
 23 A. Yes.  
 24 Q. Did this relate to a particular  
 00056:01 customer?  
 02 A. Yes.  
 03 Q. Was that a customer Mr. Yeager was  
 04 trying to sell?  
 05 A. Yes.  
 06 Q. Is that customer Beelman?  
 07 A. Beelman, yes.  
 08 Q. What business is Beelman in?  
 09 A. Bulk haul operation.  
 10 Q. What type of product would they be  
 11 looking for?  
 12 A. Probably dry bulk concrete, I  
 13 believe.  
 14 Q. But what type of Mack products --  
 15 A. Oh, I am sorry.  
 16 Q. (Continuing.) -- would Mr. Yeager be  
 17 selling to them?  
 18 A. It could have been a C8, CX. I  
 19 can't remember exactly which one it was.  
 20 Q. Were they by a vocational truck?  
 21 A. Yes.  
 22 Q. What did Mr. Yelles say to you  
 23 during this conversation?  
 24 A. He told me to cross check with Jim  
 00057:01 Ebling who is the National accounts rep that was  
 02 calling on Beelman at the time. And he told me  
 03 that Toledo Mack is just soliciting customers on  
 04 price; that we have to beat the living shit out  
 05 of him and that he is a son of a bitch.  
 06 Q. Are those exact quotes, sir?  
 07 A. Yes.  
 08 Q. Now, Beelman was a National account  
 09 of Mack Trucks; is that right?  
 10 A. That's correct.  
 11 Q. Mr. Yelles was objecting to the fact  
 12 that Mr. Yeager was soliciting him; is that  
 13 right?  
 14 A. Yes.  
 15 Q. He also was objecting to the fact

16 that Mr. Yeager was soliciting them on price.

17 A. Yes.

18 Q. Now, when he said we have to beat  
19 the living shit out of him, did you take him  
20 seriously?

21 MR. HEEP: Objection to foundation, but go  
22 ahead.

23 BY THE WITNESS:

24 A. Yes, he said it.

00058:01 BY MR. MACK:

02 Q. Did you view that as a threat  
03 against Mr. Yeager?

04 A. That was somewhat a threat, I would  
05 think.

06 Q. What type of tone did he use in his  
07 voice?

08 A. It was a serious tone.

09 Q. He then said, "he is  
10 son-of-a-bitch."

11 Now, have you heard Mr. Yelles  
12 use other profanity to refer to Mr. Yeager?

13 A. Yes.

32. PAGE 58:14 TO 62:15 (RUNNING 00:04:53.200)

14 Q. If you take a look, sir, at the next  
15 page.

16 October 28, 2002, this is two  
17 or three weeks later than the previous  
18 conversation with Mr. Yelles; is that right?

19 A. Yes.

20 Q. Are these notes of another  
21 conversation you had with Mr. Yelles?

22 A. Yes.

23 Q. This related to a deal involving Vo  
24 Mack; is that right?

00059:01 A. Yes.

02 Q. Mr. Yeager was trying to get some  
03 trucks from Vo Mack?

04 A. That's correct.

05 Q. To sell to another customer; is that  
06 right?

07 A. Yes.

08 Q. Those trucks, were they listed on  
09 dog catcher?

10 A. I am not sure if these particular  
11 trucks ended up being on dog catcher or not, but  
12 that was the original question.

13 Q. Why are you asking Mr. Yelles, are  
14 these units on free floor planning?

15 A. Because Dave Yeager -- and I can't  
16 remember if he had sent me a fax addressed to me  
17 questioning these trucks if they were on free  
18 floor plan.

19 I believe his salesman there  
20 saw these trucks sitting on the lot if I am not  
21 mistaken had some interest in those and wanted me  
22 to verify whether these trucks were on dog  
23 catcher or not.

24 Q. What did Mr. Yelles say to you?

00060:01 A. Who cares if they are on the dog  
02 catcher. The dealer advertised that the truck's

03 on dog catcher, if they want to sell. I am not  
04 saying some don't fall through the cracks; but if  
05 they are on dog catcher, he can buy them.

06 Q. Did he ever answer your question of  
07 whether or not the trucks were on free floor  
08 plan?

09 A. Not at that time, maybe at a later  
10 date. I can't really remember that.

11 Q. In that call did he do that?

12 A. No.

13 Q. Then would you read -- strike that.

14 Would you tell us what  
15 happened in the rest of that conversation with  
16 Mr. Yelles?

17 A. I stated to Jeff that I had to get  
18 answers for Dave; that I am on the firing line.  
19 And that statement was made because of the faxes  
20 that were coming addressed to me and he was  
21 requesting information and demanding answers.

22 And Jeff's answer to when I stated that I was on  
23 the firing line, he said, "We all are. I hope we  
24 whip the son of a bitch. When he is down, I will

00061:01 keep kicking," excuse me, ma'am, for some of

02 these words but "keep kicking the prick."

03 Q. Mr. Lusty, you are under oath and  
04 you are just responding to questions in quoting  
05 someone else. And no one in this room is --

06 A. Oh, okay.

07 Q. They understand that, as part of  
08 their job so don't --

09 A. Well, for the record, I want to  
10 apologize for whatever I say if it's offensive.

11 Q. I appreciate that.

12 A. And I am just telling you that and I  
13 stand corrected. No, I am not correcting but I  
14 would like to be a gentleman.

15 Q. Just back to these comments about  
16 whipping the SOB and kicking the prick, was  
17 Mr. Yelles referring to Mr. Yeager?

18 A. Yes.

19 Q. This was a conversation with you and  
20 Mr. Yelles about Mr. Yeager; right?

21 A. That's correct.

22 Q. Did you take that as a threat  
23 against Mr. Yeager?

24 A. That was getting to the point where  
00062:01 it was starting to look like, yeah, it's not  
02 good.

03 Q. You didn't interpret this as -- you  
04 interpreted this as a serious matter; right?

05 A. Serious statement, yes.

06 Q. Did he also say or at the end of the  
07 conversation, "I don't know how you feel, but he  
08 is a prick?"

09 A. Yes, he did.

10 Q. You responded to Mr. Yelles, didn't  
11 you?

12 A. Yes, I he.

13 Q. What did you say?

14 A. I said, "I don't either way. That's  
15 not my place."

## 33. PAGE 62:16 TO 66:07 (RUNNING 00:04:09.000)

16 Q. If we move ahead to January 21st,  
 17 2003, M0164381 almost -- 1/21/03.  
 18 A. 1/21/03?  
 19 Q. Yes, sir.  
 20 A. 11:42 a.m.?  
 21 Q. Yes. Is this another conversation  
 22 you had with Mr. Yelles?  
 23 Do you want to read it  
 24 yourself first? Go ahead.

00063:01 A. Yes.  
 02 Q. This conversation related to an  
 03 attempt by Mr. Yeager to sell to Florida Rock; is  
 04 that correct?

05 A. That's correct.  
 06 Q. What business was Florida Rock in?  
 07 A. The vocational business.  
 08 Q. Is Mr. Yeager trying to sell  
 09 vocational trucks to Florida Rock?

10 A. That's correct.  
 11 MR. HEEP: I want to clarify, was your  
 12 question, is everything on this page about  
 13 Florida Rock or is some part of this conversation  
 14 about Florida Rock.

15 MR. MACK: I was sloppier than that. I  
 16 said, "Was this a conversation about Florida  
 17 Rock?"

18 BY MR. MACK:

19 Q. There is also a note at the bottom  
 20 about customer PJAX; right?

21 A. That's correct.  
 22 Q. Let's put the PJAX part to the side  
 23 for a second and just talk about Florida Rock.

24 Did Mr. Yelles say to you,

00064:01 "You steer clear of this?"  
 02 A. Yes.  
 03 Q. You put in your notes, Florida Rock

04 deal?  
 05 That's what you understood him  
 06 to be referring to?

07 A. Yes. That's correct.  
 08 Q. What is this first part of the  
 09 conversation was about; right?

10 A. That's correct.  
 11 Q. Did Mr. Yelles say to you in this  
 12 conversation, "no good cocksucker?"

13 A. Yes.  
 14 Q. Was he referring to Mr. Yeager?

15 A. Yes.  
 16 Q. And did Mr. Yelles say to you, "I  
 17 hate to feel that way about anyone, but that's  
 18 what he is"?

19 A. That's correct.  
 20 Q. Then did he say to you, "Too bad we  
 21 can't work out our deal like Weldon's deal"?

22 A. Yes.  
 23 Q. That's a reference to Wyn Weldon who  
 24 owned another dealership in your region; is that

00065:01 right?  
 02 A. Yes, sir.  
 03 Q. Had Mack terminated or attempted to

04 terminate Mr. Weldon?  
05 A. Yes.  
06 Q. They ended up working out a deal  
07 with him; is that right?  
08 A. I wasn't privy to that deal. But I  
09 would assume so because he is not there.  
10 Q. He is out of the system; right?  
11 A. Yes, that's correct.  
12 Q. And Mr. Yelles, in this  
13 conversation, with you referenced Mr. Weldon's  
14 deal?  
15 A. Yes.  
16 Q. And he said, "Too bad we can't work  
17 out our deal like Mr. Weldon's deal?"  
18 MR. HEEP: Asked and answered. Go ahead.  
19 BY MR. MACK:  
20 Q. He said, "Do you think he would go  
21 for that?" Is that right?  
22 A. Yes.  
23 Q. What did you understand him to mean  
24 when he said, "Do you think he would go for  
00066:01 that?"  
02 A. I knew a little bit about that deal,  
03 but I didn't know the whole thing. Whatever the  
04 terms were, he thought maybe that Toledo Mack  
05 would go for a deal like that. And he asked me,  
06 "Do you think they would go for that and my  
07 answer to that statement is, "I don't know."

**34. PAGE 66:08 TO 66:10 (RUNNING 00:00:10.300)**

08 Q. Was it pretty clear to you,  
09 Mr. Lusty, in January of 2003 that Mr. Yelles  
10 wanted to get Mr. Yeager out of the Mack system?

**35. PAGE 66:13 TO 66:17 (RUNNING 00:00:10.800)**

13 A. Yes.  
14 BY MR. MACK:  
15 Q. What did you base that belief on?  
16 A. Some of the statements that were  
17 made and some of the instructions I had.

**36. PAGE 66:18 TO 68:01 (RUNNING 00:01:14.000)**

18 Q. Now at the bottom of this page, you  
19 refer to a deal, PJAX.  
20 Is that the name of the  
21 company? Strike that.  
22 Is there a company known as  
23 PJAX?  
24 A. PJAX, yes, out of Pittsburgh,  
00067:01 Pennsylvania.  
02 Q. What type of business are they in?  
03 Vocational?  
04 A. No. That's a trucking company,  
05 regional carrier.  
06 Q. Had Mr. Yeager been attempting to  
07 sell trucks to PJAX?  
08 A. Yes.  
09 Q. Was this part of this conversation  
10 with Mr. Yelles on January the 21st of 2003? Did  
11 that company come up?  
12 A. Yes.

13 Q. What did Mr. Yelles say to you?  
14 A. That I needed to stay out of that  
15 one, too.  
16 Q. What did you understand that to  
17 mean?  
18 A. My job as a district manager is to  
19 get the dealers the discount they requested or an  
20 established discount.  
21 I was in the process of that  
22 and doing cross checks and e-mails and became a  
23 little bit heated and he sort of told me I just  
24 needed to stay out of that one, too, as I stayed  
00068:01 out of Florida Rock.

**37. PAGE 71:11 TO 76:08 (RUNNING 00:05:39.900)**

11 Q. Do you recognize this, sir, Exhibit  
12 7?  
13 A. Yes.  
14 Q. Is that your handwriting on it?  
15 A. Yes.  
16 Q. Does this relate to an attempt by  
17 Mr. Yeager to buy 50 trucks from Mack?  
18 A. Yes.  
19 Q. Did Mr. Yeager explain to you what  
20 he wanted to do with those trucks?  
21 A. Yes.  
22 Q. What did Mr. Yeager want to do?  
23 A. He wanted to buy a quantity of  
24 trucks at a discount and I think the strategy  
00072:01 there was to -- let me just read here for one  
02 second here.  
03 This was an attempt by  
04 Mr. Yeager to purchase a quantity of trucks from  
05 Mack Trucks to compete with some of the Body  
06 Builders and/or body distributors.  
07 An example, RDK and some of  
08 those other people who buy quantities of trucks  
09 to purchase these trucks at a discount and market  
10 these trucks.  
11 Q. He wanted to purchase the trucks at  
12 a discount from Mack and then he wanted to put  
13 bodies on them and then compete and try to sell  
14 those trucks to end users; is that right?  
15 MR. HEEP: Objection to form.  
16 MR. PARKS: You can answer.  
17 BY THE WITNESS:  
18 A. Yes.  
19 BY MR. MACK:  
20 Q. He told you he wanted to be like  
21 RDK; is that right?  
22 A. He wanted to compete and be that  
23 type of a business, yes.  
24 Q. We know that Mack sells to McNeilus,  
00073:01 McClain and Hiel; right?  
02 A. Yes.  
03 Q. McClain, McNeilus and Hiel then  
04 sells to end users; right?  
05 A. Yes.  
06 Q. RDK, do they sell vocational  
07 products, too?  
08 A. Yes.

09 Q. Do they compete then against

10 McClain, McNeilus and Hiel?

11 MR. HEEP: Objection to form.

12 BY THE WITNESS:

13 A. Yes.

14 BY MR. MACK:

15 Q. Was this then, sir, in your view an  
16 attempt by Mr. Yeager to compete against McClain,  
17 McNeilus and Hiel?

18 MR. HEEP: Objection to form.

19 BY THE WITNESS:

20 A. Yes.

21 BY MR. MACK:

22 Q. You had a conversation with  
23 Mr. Yeager about this where he explained to you  
24 what his plan was?

00074:01 A. Yes.

02 Q. Did you think he was serious about  
03 doing it?

04 A. Yes.

05 Q. Now, you talked to Mr. Yelles about  
06 that on July the 31st of 2001, didn't you?

07 A. Yes.

08 Q. You wrote down some notes about what  
09 Mr. Yelles told you during that conversation;  
10 right?

11 A. Yes.

12 Q. Those notes are on Exhibit 7?

13 A. Yes.

14 Q. Would you tell us what Mr. Yelles  
15 said to you there on July the 31st? Is this on  
16 the phone call?

17 A. It's on a cell phone call, yes.

18 Jeff asked me, "What's with this Yeager company?  
19 This goddamn Yeager. How many trucks is this?  
20 This bullshit has to stop. Didn't know why you,  
21 meaning me, would pass it along."

22 Q. How did you react to that?

23 A. Well, my response to Jeff at that  
24 time was I passed it along because it was an

00075:01 official sales assistance request from a dealer  
02 who was interested in purchasing 50 trucks from  
03 Mack Trucks. And I do work for Mack Trucks and  
04 my job is to sell trucks through the dealer  
05 network. I don't think it's up to me to deny a  
06 request like that.

07 Q. Now then at the bottom of the page,  
08 you have some more notes and you have -- the last  
09 two lines are underlined at least in part.

10 Is that something else that  
11 Mr. Yelles said to you?

12 A. Yes. I wanted to know how many  
13 trucks. Is this a start up company? What's with  
14 this company? Jeff told me he knows what he is  
15 trying to do. He wants to establish discounts  
16 and sell trucks all over the place. We are not  
17 going to let this happen.

18 Q. Mr. Lusty, is that exactly what  
19 Mr. Yelles said to you, "We are not going to let  
20 this happen?"

21 A. That's what the phone conversation,  
22 that's how it took place. That's what he said.

23 Q. Mr. Yelles, at the time was your  
 24 boss and the regional vice president of Mack;  
 00076:01 right?

02 A. Yes, sir.

03 Q. When he said, "We are not going to  
 04 let this happen, he said that right after he  
 05 said, "Mr. Yeager was trying to establish  
 06 discounts and sell trucks all over the place";  
 07 right?

08 A. That's correct.

38. PAGE 87:20 TO 89:20 (RUNNING 00:01:49.300)

20 Is this a conversation that  
 21 you had with Mr. Yelles?

22 A. Yes.

23 Q. You put down -- is it -- well,  
 24 12/11/03 isn't here yet.

00088:01 A. I am sorry. That was '02.

02 Q. Is it '02? Is that what it was?

03 A. Yes.

04 Q. That happens to the best of us.  
 05 Mr. Yelles was at a district manager meeting in  
 06 Dallas when he called you; is that right?

07 A. It was a -- it wasn't a district  
 08 manager meeting. I could be confused, but it  
 09 was -- I thought it was an ATD meeting. I don't  
 10 know why I wrote district manager meeting, but it  
 11 was a meeting in Dallas. It was a meeting in  
 12 Dallas.

13 Q. He had some not so nice things to  
 14 say about Mr. Yeager during this call; right?

15 A. That's correct.

16 Q. Would you, sir, read into the record  
 17 what Mr. Yelles said about Mr. Yeager during this  
 18 call?

19 A. You just want me to read straight  
 20 down or --

21 Q. Well, why don't you tell us what he  
 22 said?

23 A. All right. He said that no good  
 24 cocksucker, he'd fuck up an apple cart. Don't  
 00089:01 play by the rules. Some motherfucker should take  
 02 this guy out. We are not here to fucking jump up  
 03 and down when he gets on a deal. Where was he  
 04 the last five or 10 years? He can go fuck  
 05 himself.

06 Do you know how much in legal  
 07 fees this is going to cost the company? Who  
 08 knows what's going to happen down the road? It's  
 09 going to get a hell of a lot worse.

10 Do you know what this is going  
 11 to do to our dealers and our customers?

12 Q. Now, you wrote over in the right  
 13 hand margin, "Jeff very upset?"

14 A. Yes.

15 Q. Why did you write that?

16 A. Because that was the tone of the  
 17 conversation. He was very upset.

18 Q. Did you take these remarks from  
 19 Mr. Yelles very seriously?

20 A. Yes, I did.